



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

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February 11th, 1998

Minutes of the February 11th, 1998 meeting of the Commission on Governmental Ethics and Election Practices held in Room B8 of the State Office Building, Augusta.

Present: Chairman Peter B. Webster; members Linda W. Cronkhite, Harriet P. Henry (telephonically present), G. Calvin Mackenzie, Merle R. Nelson; Commission Counsel Phyllis Gardiner; Director Marilyn Canavan.

Chairman Webster called the meeting to order at 9:05 a.m. He then announced that Commissioner Henry would be participating in the proceedings telephonically; that her voice would be clearly audible to those present; and that anyone desiring to communicate with her should feel free to do so. Asked whether the arrangement conformed to the freedom of access law and whether Ms. Henry could properly cast her vote telephonically, Counsel Gardiner answered in the affirmative.

Next, Ms. Nelson moved, and Mr. Mackenzie seconded, to approve the minutes of the January 14th, 1998 meeting as written. The motion was voted unanimously.

Ms. Canavan then discussed the recommendations of the Stakeholder Planning Committee. She said that she had met with members Anne Schink, Karin Tilberg, and Counsel Gardiner; that the group had compiled a tentative list of invitees; and that it had established as tentative dates for the meetings: March 3rd, March 17th, and March 31st. She said the Committee recommended that each invitee be sent a packet containing a basic set of ground rules, a list of the participants, and a summary of the core issues to be discussed. She then turned the discussion over to Ms. Schink who first discussed the draft ground rules and then raised several questions about what the final version should include.

After conferring at length, the members recommended to Ms. Schink that the ground rules convey the following:

- 1) The conclusions of the stakeholders are advisory only and not binding on the Commission;
- 2) There need not be consensus on every issue;
- 3) A stakeholder may assign a substitute if the stakeholder is unable to attend a meeting;
- 4) Commissioners are encouraged to attend the meetings and to participate as they see fit;
- 5) As a participant, the status of the Commissioners is on a par with other stakeholders.

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It was suggested that consideration be given to holding the meetings late in the day so as to accommodate working people; and that meetings be coordinated such that at least one member of the commission is present at each session.

Ms. Tilberg then discussed details of the summary she had prepared for discussion at the first meeting. At the conclusion of her remarks, a question was raised as to whether the issue of electronic filing should be included in the summary. On reflection, the members concluded that the process would best be served if peripheral issues were dealt with separately, at a later date.

At that point, Ms. Nelson suggested that the Commission conduct its review of lobbyist issues out of order. She said she had asked for and obtained the permission of the Chair to meet with lobbyists Richard Davies and Jon Doyle; and on hearing of their concerns, had invited them to address the Commission.

Mr. Davies then rose to speak. He said that Ms. Nelson, Mr. Doyle and he had discussed a variety of issues and had agreed that two matters in particular warranted the Commission's review.

These were:

- 1) The conflict between the bribery statutes and the legislative ethics statute, and
- 2) Certain ambiguities in the definition of lobbying.

He then introduced Mr. Doyle who further expounded on the issues raised by Mr. Davies. Mr. Doyle said that the Attorney General's office had ruled "some time ago" that the bribery statute prohibits the payment of money by a lobbyist to a legislator, including the purchase of a meal. He characterized the opinion as "overly harsh" and a "denial of reality" and went on to opine that the portion of the bribery law that prohibits gifts is inconsistent with the lobbyist reporting law which requires that a lobbyist disclose the name of each official on whom \$25 or more is spent. He said that "no one ever fills in that line item because to do so would be to disclose that one had done something inappropriate." He then suggested that the Commission examine the gift law, reach a conclusion, and make a recommendation to the Legislature to address what he termed were ambiguities within the law. He further suggested that the bribery law be amended to permit the receipt of meals costing up to \$25.

Mr. Doyle then went on to discuss another issue which he said warranted attention: the definition of "lobbying" set forth in 3 M.R.S.A. Section 312-A(9). He said that while the law requires lobbyists to report all lobbying activity, it contains no "bright line" that distinguishes between lobbying activities and such services as legal advice, public relations, and public affairs work; that consequently, there is uncertainty as to what must be disclosed in reports filed with the Commission. He concluded by offering to submit for the Commission's consideration draft legislation dealing with the issues undergoing review. Asked by Mr. Webster whether the draft would address the 8-hour rule as well, Mr. Doyle responded in the affirmative. Thereupon, Mr. Webster said the Commission would be happy to consider a draft proposal if one were presented to the members at the April meeting.



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Mr. Davies then discussed yet another issue of concern to him: the relationship between lobbyists and legislators. He said that prior to term limits, most Legislators with some measure of longevity were reasonably knowledgeable about the role of lobbyists but that now; many knew little about the lobbying profession. As a remedy, he suggested that lobbyists be invited to participate in the Commission's biennial ethics seminar on a rotating basis. He said the forum would allow lobbyists to educate legislators as to the validity of the lobbying function and the fact that lobbyists may be a useful information resource in the legislative process. Mr. Davies went on to suggest that one means by which Legislators could more readily identify lobbyists might be through the production of a booklet containing photos of and background on lobbyists, including a list of the clients they represent. At that point, a concern was raised at the prospect of the Commission paying for and endorsing such a publication. Thereupon, Mr. Mackenzie suggested that the Commission consider converting the data into an on-line version so that Legislators could access the information in a variety of ways. Mr. Davies then thanked the members and agreed to provide them with a draft bill for consideration at the April meeting.

Mr. John Brautigam, a representative of the Maine Citizen Leadership Fund, then rose to offer his assistance to the Commission in preparing an analysis of the issues raised by Mr. Davies and Mr. Doyle. Mr. Webster replied that the matter would be discussed at the April meeting at which time the Commission would be pleased to hear from anyone with particular views or interests in the issues undergoing review.

Next, the Commission considered the complaint of Mr. Paul Volle against an entity known as the Religious Coalition Against Discrimination (RCAD). The complainant alleged that RCAD had circulated a political communication in violation of 21-A M.R.S.A. Section 1055. Staff findings indicated that the activities of RCAD constituted those of a PAC; that the group was therefore subject to the attribution law; that the communication lacked attribution; that, hence, Mr. Volle's complaint was a valid one. Findings further showed that RCAD officials had registered late, but had nevertheless made a good faith effort to report on time. Mr. Thomas Ewell was present and spoke on behalf of RCAD. He pointed out that the names of RCAD officials were listed on the communication in question, evidence that the group had made no attempt to hide the source of the funding. He then acknowledged that RCAD had registered late but said that the group had moved quickly to report on learning of the requirements. At the conclusion of Mr. Ewell's remarks, Ms. Nelson moved, and it was seconded, to accept the staff recommendations; i.e., to assess a \$25 penalty against RCAD for its failure to comply with the attribution law, but to waive all other penalties in light of the fact the PAC had demonstrated a good faith effort to report on time. The motion was seconded and voted.

The next matter to undergo review was the late monthly disclosure reports of lobbyist Christos Gianopoulos. Findings showed that Mr. Gianopoulos had incurred a penalty of \$200; i.e., \$ 100 for each of two clients; and that Mr. Gianopoulos had filed late once before, Mr. Gianopoulos was present and represented himself. He said that he failed to file the reports for the month of November because he mistakenly believed the lobbying year had ended, and that no further reports were required. Asked by Ms. Nelson whether lobbyists are provided any instructional materials, Ms. Canavan responded in the affirmative. Thereupon, Mr. Mackenzie moved, and



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Ms. Nelson seconded, that Mr. Gianopoulos be assessed the maximum penalty of \$200, this being his second violation. The motion was voted.

Next, the Commission considered the late report of the political action committee known as Citizens for a Livable Environment in Alliance with Nature (CLEAN). Findings showed that the PAC filed its quarterly report 7 days late, thereby incurring a penalty of \$688.45; and that this was the PAC's first violation. Ms. Nancy Oden, treasurer of CLEAN, was present and represented the PAC. She said the report was delayed because of the ice storm which struck Maine in January: that the storm prevented her from traveling from her Jonesboro home to Augusta where her records were kept. Thereupon Ms. Nelson moved, and Mr. Mackenzie seconded, that the Commission waive the penalty in its entirety. The motion was voted unanimously.

At that point, Mr. Mackenzie suggested that the Commission waive the penalties of each entity whose reports were delayed because of the storm, provided that the report arrived within a reasonably short period of time after the deadline. Accordingly, a motion was made, seconded, and voted to forgive the penalties of the following entities:

Filing Entity	Penalty incurred/forgiven
Steve Crouse /MEA PAC	\$235.31
Nan Elizabeth Reynolds/ Maine Optometric PAC	\$16.00
Richard Gould (candidate)	\$17.64

Next, the commission considered the following lobbyists' filings which were submitted without the signature of the lobbyists' employer:

- A. Annual report of Lynda Berube/DeCoster Farms (penalty incurred - \$200)
- B. Annual report of Charles C. Soltan/Chlorine Chemistry Council (penalty incurred - \$200)
- C. Annual reports of Gordon Smith/ (penalty incurred - \$800)
 - ME Chapter of the American College of Emergency Physicians
 - ME Psychiatric Association
 - ME Radiologic Association
 - ME Society Eye Physicians and Surgeons

The first such report to undergo review was that of Charles Solton (Chlorine Chemistry Council). Findings showed there was no record of a prior violation. Mr. Webster asked to be excused because of a potential conflict of interest, whereupon Mr. Mackenzie assumed the role of Chair pro-tem. Ms. Seeley was present and represented Mr. Soltan. She said that Mr. Soltan's firm

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had done everything within its control to obtain the signature of CCC: that early in December, the firm had notified CCC officials of the impending deadline; that despite subsequent reminders, no response was immediately forthcoming; that consequently, Mr. Soltan decided to file the report without his employer's signature; that CCC finally submitted a signed copy of the report on January 12th, 1998, 12 days after the due date. Thereupon, Ms. Nelson moved, and Ms. Cronkhite seconded, that the Commission waive Mr. Sultan's share of the penalty. It was further moved that a reduced penalty of \$50 be assessed against CCC, this being CCC's first violation. The motion was voted 4-0-1, Mr. Webster abstaining.

Next, the Commission discussed the annual report of Ms. Lynda Berube, lobbyist for DeCoster Farms. Ms. Nelson moved, and Ms. Cronkhite seconded, that the Commission waive Ms. Berube's share of the joint penalty, on the basis of evidence showing that Ms. Berube had made a good faith effort to obtain her employer's signature. It was also moved that DeCoster Farms be assessed a penalty; and that the penalty be reduced by 50 percent (to \$50), this being DeCoster's first violation. The motion was voted 4-0-1, Mr. Webster abstaining because of a representational relationship between his firm and that of, DeCoster Farms.

At that point, Mr. Webster again assumed control of the meeting whereupon the Commission reviewed the annual reports of lobbyist Gordon Smith, each of which were missing the employer's signature. Findings showed that the penalty incurred by Mr. Smith was \$800; i.e., \$200 for each of four deficient reports. Findings further indicated Mr. Smith had no prior violations. Mr. Smith was present and represented himself. He said that the responsibility for filing the reports rested with him, but that changes in office personnel had resulted in miscommunication which, in turn, had led to the reports being filed without the employer's signature. At the conclusion of Mr. Smith's remarks, a motion was made, seconded, and voted to reduced Mr. Smith's penalty to \$400 (i.e., to \$100 per entity), this being his first violation.

Next, the Commission considered the request of Mr. Smith for a refund of the joint registration fees he had paid for two clients. Findings indicated the amount remitted was \$1,600. Once again, Mr. Smith rose to address the Commission, this time to support his request for cancellation of the registrations. He said that he had conducted no lobbying whatsoever for the employers shown on the registrations and that he had requested a refund about a week after the filing. In the discussion that ensued, concerns were raised about the precedent that might be set should the Commission grant Mr. Smith's request; i.e., whether others in similarly situated circumstances might be entitled to a refund. At the conclusion of the discussion, Ms. Cronkhite moved, and Ms. Nelson seconded, that Mr. Smith's registrations be canceled and that his registration fees be rescinded because of the unique circumstances presented by the case. It was further moved that the staff be directed to develop a policy statement for dealing with refunds, that the policy specify the conditions under which refunds may be made and the administrative costs to be paid when a refund is made. The motion was seconded and voted unanimously.

Next, the Commission considered Item #13: the complaint of Matt Anson in which it was alleged that the filings of various entities required to report with the Commission were deficient. Mr. Anson was present and addressed the Commission concerning the issues raised in his complaint. Thereupon, the staff recommended tabling the complaint so as to allow time to analyze the



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claims made by Mr. Anson. Mr. Anson voicing no objections, a motion was made, seconded, and voted to accept the staff's recommendation.

Next, on the recommendation of the staff, a motion was made, seconded, and voted to table Item #2: Review of the amended reports of Ms. Annette Hoglund.

The Commission then considered agenda Item #9B: the request of lobbyist Robert Luria for a waiver of the penalty assessed him for a late report. Findings showed that Mr. Luria and his employer Glaxo Wellcome had incurred a joint penalty of \$200; that Mr. Luria had no prior violations. On those findings, it was moved, seconded, and voted to reduce Mr. Luria's penalty by 50 percent; i.e., to \$100.

Next, the Commission considered the request of Lobbyist John Shoos (United Way of Greater Portland) for a waiver of the penalty assessed for his late annual report. Findings showed that Mr. Shoos had incurred a penalty of \$200; and that he had one prior violation. On those findings, Mr. Mackenzie moved, and Ms. Nelson seconded, to assess the maximum penalty. The motion was voted unanimously.

The Commission then considered Item #12C, the deficient annual report of Katherine Maselli/Pfizer Inc. Findings showed Ms. Maselli had incurred a penalty of \$200; that she had filed late once before. The Commission reviewed the letter of Ms. Elizabeth Bartz on behalf of Ms. Maselli in which an explanation was offered as to why the report was filed without the signature of the employer. At the conclusion of the review, a motion was made, seconded, and voted to reject the report as timely filed and to assess Ms. Maselli a penalty of \$200 for the tardiness of her report.

The Commission then considered Item #12D, the deficient annual report of Kimball Kenway/Access Communications, Findings showed that Mr. Kenway's penalty was \$200; that he had filed late once before. The Commission reviewed the letter of Mr. Kenway in which he explained that his client, Access Communications, LLC, had dissolved its company on December 9th, 1997, that he was thus unable to secure the signature of his employer on the annual report. At the conclusion of the review, a motion was made, seconded, and voted to reject the report as timely filed on the basis that it was incomplete, and to assess Mr. Kenway the maximum penalty of \$200.

Next a motion was made, seconded, and voted to enter into executive session to consider the request of a Legislator for an advisory opinion. The Legislator asked whether he would have a conflict of interest in voting on L.D. 2148: An Act to Grant the Joint Standing Committee Having Jurisdiction over Criminal Matters the Authority to Review the Appointments of the Commissioner of Public Safety and the Chief of Police. According to the Legislator, he is employed as Regional Coordinator for Emergency Medical Services for Kennebec Valley EMS Council. He said the Council was issued one of six contracts from the Department of Public Safety. On emerging from the session, a motion was made, seconded, and voted to direct the staff to notify the Legislator that no conflict would exist in his voting on L.D. 2148.



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The next item to undergo review was the deficient annual report of lobbyist Richard Silkman. Findings showed the penalty incurred by Mr. Silkman and his employer (Industrial Energy Consumer Group) was \$200; and that Mr. Silkman had one prior violation. On those findings, Mr. Mackenzie moved, and Ms. Cronkhite seconded, to reject Mr. Silkman's report as timely filed and to assess him the maximum penalty of \$200.

Next, Ms. Canavan reported that Mr. Tony Raymond would be conducting a demonstration of filing software in Room 121 of the State Office Building. She said that approximately 18 Legislators had responded to the staff's invitation to sign up for the Commission's pilot program,

The Commission staff then asked for guidance on several questions dealing with the newly enacted law which prohibits lobbyists, lobbyist associates, and their employers from making contributions to a Legislator during the, legislative session. After a brief review of the questions, Ms. Cronkhite moved, and Ms. Nelson seconded, to table the matter until the next regular meeting, so as to allow members time to conduct a more in-depth examination of the questions raised.

A motion was then made, seconded, and voted to enter into executive session for the purpose of discussing a petition filed with the Courts by the National Right to Life PAC State Fund. Assistant Attorney General Andrew Hagler discussed details of the litigation and answered Commissioners' questions. The executive session concluded at 12:00 noon; whereupon, a motion was made, seconded, and voted to adjourn the meeting,

Respectfully submitted,

Marilyn Canavan, Director